

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

LINCOLN ANTHONY MOODY,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 10-3335-CV-S-DGK-H
MARTY C. ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas pursuant to 28 U.S.C. § 2241. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to exhaust administrative remedies, it must be recommended that he be denied leave to proceed in forma pauperis.

After the Show Cause Order was filed, respondent filed a response. Thereafter, counsel for petitioner filed a motion to withdraw. Petitioner was afforded the opportunity to file a *pro se* traverse, which he did. He then filed a motion for default.

Having fully reviewed the record, the Court finds that it must be recommended that the petition for habeas corpus relief be dismissed without prejudice. Although he asserts that he was the victim of an assault by staff at the Medical Center, the record indicates that he failed to fully exhaust administrative remedies on this issue. Specifically, respondent submits that, although he did

attempt to utilize the administrative remedy process, he did not completely exhaust administrative remedies, either by failing to appeal the issue to the Regional Director or the General Counsel. [Respondent's Exhibit 4]. Accordingly, it must be recommended that the petition for habeas corpus relief be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 22 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition for habeas corpus relief be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate
Judge

Date: _____

¹ Petitioner has 14 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.